

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

ITC TEXTILE, LTD.,

Plaintiffs.

V.

WAL-MART STORES, INC.; JERRY LEIGH OF CALIFORNIA, INC.; and DOES 1 through 10, inclusive,

Defendants.

Case No. CV11-01967 RSWL (PLAx)

ORDER GRANTING STIPULATED PROTECTIVE ORDER

In connection with the production of confidential documents and other confidential information in this action, Plaintiff ITC Textile, Ltd. ("Plaintiff") and Defendants Jerry Leigh of California, Inc. and Wal-Mart Stores, Inc. ("Defendants") (collectively, the "Parties"), by and through their respective counsel of record, have agreed to be bound by this Protective Order for Confidential Treatment of Documents or Information (the "Protective Order" or "Order").

STATEMENT OF GOOD CAUSE: This action involves claims for copyright infringement Under the Copyright Act of 1976, Title 17 U.S.C. § 101, et seq. The Parties, who are variously manufacturers and vendors of textile designs and apparel retailers, are direct and/or indirect competitors of each other. A primary

1 element of this case is related to Plaintiff's claim that because of Defendants' alleged
2 wrongful acts, Plaintiff has lost substantial business relating to its copyrighted
3 designs. The Parties therefore recognize that extensive discovery requesting
4 information from the Parties, their vendors, customers and clients, including financial
5 information, market information and other commercially and competitively sensitive
6 information may be necessary to prove and/or disprove Plaintiff's claims and
7 Defendants' defenses thereto. There will also potentially be multiple depositions of
8 the Parties' employees or agents and third party vendors, customers or clients and
9 such persons will likely be asked to answer questions on these potentially sensitive
10 subject areas. The Parties, as competitors in the industry, will likely be placed at a
11 competitive or economic disadvantage if such confidential and/or proprietary
12 information is disclosed to other Parties and/or the public at large. This Protective
13 Order is therefore necessary to avoid any prejudice or harm in the form of loss of
14 competitive advantage which would likely result if such information was disclosed in
15 the absence of the protections set forth herein.

16 This Order is also necessary for the orderly management of this litigation.
17 Without this Order, the exchange of party information, as well as information needed
18 from third parties, including most importantly the Parties' vendors, customers or
19 clients may become logically very difficult, time consuming and expensive.

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21 **A. Definition of "Confidential Information".**

22 1. "Confidential Information," as used herein, means all information in
23 whatever form, such as oral, written, documentary, tangible, intangible, electronic, or
24 digitized now or hereafter in existence that:

25 (a) is protected under the Uniform Trade Secrets Act, California Civil
26 Code section 3426, et. seq., in that such information derives independent economic
27 value, actual or potential, from not being generally known to, and not being readily

1 ascertainable by proper means, by other persons who can obtain economic value from
2 its disclosure or use; and

3 (b) is the subject of efforts that are reasonable under the
4 circumstances to maintain its secrecy; and

5 (c) is otherwise regarded by a party as being confidential, private, or
6 proprietary in nature; and

7 (d) as illustrative examples only, the Parties anticipate that the
8 following descriptive categories will be designated as Confidential Information under
9 this Order, including, but not limited to, customer lists, confidential financial
10 information of the Parties, including profit margins, sales data, profits, and retail sales
11 summaries, vendor lists, order summaries, confidential contracts, and proprietary
12 fabric/style specifications.

13 2. Confidential Information is unlimited in kind or form and includes, by
14 way of example only and without limitation thereto, information relating to the
15 following: any products, designs, specifications, tests, plans, studies, surveys,
16 manufacture, distribution, marketing, promotion, advertisement, sales, opportunities,
17 vendors, customers, financial matters, costs, sources, prices, profits, research,
18 development, analysis, know-how, show-how, personnel, strategies, or competition.
19

20 **B. Production of Confidential Information.**

21 1. All efforts by any party or witness in this matter to designate any
22 information as "Confidential," shall be governed by the terms of this Order. The
23 party by whom any disclosure is made is the "Disclosing Party" and the party to
24 whom any disclosure is made is the "Receiving Party." By receiving any property
25 designated as "Confidential," the Receiving Party agrees not to disclose, publish,
26 disseminate, or use, other than as expressly permitted herein, any such property and
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1 will assure that all reasonable efforts are made to prevent any unauthorized use,
2 disclosure, publication or dissemination of such property.

3 2. All Confidential Information produced by the Disclosing Party to the
4 Receiving Party in whatever form (e.g., documents, materials, things, testimony or
5 other information) during the course of this matter shall be designated "Confidential"
6 or "Confidential-Attorneys' Eyes Only" in accordance with the terms of this Order,
7 *infra*, prior to disclosure, by use of a reasonably conspicuous and prominent mark. In
8 the case of documents, the mark shall be on every page.

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10 **C. Levels of Confidentiality.**

11 Any information designated as "Confidential" or "Confidential-Attorneys' Eyes
12 Only" shall be restricted in accordance with the following levels of confidentiality:

13 1. "Confidential-Attorneys' Eyes Only" Documents or Information. A party
14 may designate documents or information as "Confidential-Attorneys' Eyes Only" if
15 the party reasonably believes the documents or information embody (a) materials
16 which are of an extremely high degree of current commercial sensitivity, and (b)
17 would provide a competitive advantage to one or more of the parties to this case if
18 disclosed.

19 2. "Confidential-Attorneys' Eyes Only" Information designated as
20 "Confidential-Attorneys' Eyes Only" shall be restricted to viewing, or copying by,
21 and disclosure to:

22 (a) Attorneys acting on behalf of the Parties in this matter;
23 (b) The office personnel employed by the counsel working under the
24 direct supervision of said counsel;
25 (c) The United States District Court for the Central District of
26 California and all clerks and other personnel in the United States District Court for
27 the Central District of California, before which this action is pending;

1 (d) Experts and consultants necessarily retained by counsel of record
2 in this litigation, but only if these experts and consultants comply with this agreement
3 in full and read, sign, and agree to be bound by all of its terms;

4 (e) Witnesses at depositions or pre-trial proceedings, in accordance
5 with procedures set forth in paragraphs D.1 – D.6; and

6 (f)) Any mediator in this matter.

7 (g) Any Person who the Parties agree in writing may receive
8 Confidential Information designated as "Confidential-Attorneys' Eyes Only."

9 3. "Confidential" - Information designated as "Confidential" shall be
10 restricted to viewing, copying by, and disclosure to:

11 (a) All "Confidential-Attorneys' Eyes Only" persons subject to the
12 requirements of subparagraph C.2;

13 (b) All employees, officers, and directors of each party of record; and

14 (c) Any Person who the Parties agree in writing may receive
15 Confidential Information designated as "Confidential."

16 Before counsel of record for the Receiving Party may disclose Confidential
17 Information to any Person described in subparagraphs C.2(d), C.2(e), C.2(f), C.3(b),
18 and C.3(c) above, the Person to whom disclosure is to be made shall receive a copy
19 of this Protective Order and shall evidence his or her agreement to be bound by the
20 terms, conditions, and restrictions of the Protective Order by signing an undertaking
21 in the form attached hereto as **Exhibit A** (the "Undertaking"), and shall retain the
22 copy of this Protective Order, with a copy of his or her signed Undertaking attached.

23 Counsel of record for the Receiving Party shall keep a copy of the signed
24 Undertaking for each person described in subparagraphs C.2(d), C.2(e), C.2(f),
25 C.2(b), and C.2(c) to whom counsel of record for the Receiving Party discloses
26 Confidential Information.

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1 **D. Depositions.**

2 1. Any party may designate testimony on oral deposition as "Confidential"
3 or "Confidential-Attorneys' Eyes Only." The designation of such testimony shall be
4 made at any point during the deposition by so stating on the record and identifying
5 the level of protection desired.

6 2. Once testimony has been designated as "Confidential" or "Confidential-
7 Attorneys' Eyes Only", only the following persons shall be permitted to view the
8 transcript:

- 9 i. Persons authorized under this Order;
10 ii. The deponent; and
11 iii. The reporter and videographer.

12 3. Each court reporter and videographer participating in any deposition
13 shall be provided with a copy of this Order and shall adhere to its provisions. Each
14 court reporter must separately bind those portions of any deposition transcript and
15 related exhibits deemed confidential and shall further separate into separate bound
16 deposition transcripts-by the various levels of confidentiality-and shall thereon place
17 a reasonably conspicuous and prominent designation on the first page of each such
18 bound transcript or exhibits.

19 4. A deponent and/or party shall have until thirty (30) days after receipt of
20 a deposition transcript to designate additional portions of the transcript under this
21 Order.

22 5. Each party shall cause each copy of the transcript in its custody or
23 control or that comes into its custody or control to be immediately marked as
24 designated.

25 6. Prior to the expiration of the thirty (30) days, a deposition transcript
26 and/or the substance of a deponent's answers may be disclosed only to those persons
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1 authorized to receive items designated as "Confidential-Attorneys' Eyes Only" and
2 the deponent.

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4 **E. Items Filed with the Court**

5 1. The designation of documents or information as "Confidential" or
6 "Confidential/Attorneys' Eyes Only" creates no entitlement to file such documents or
7 information under seal. Civil Local Rule 79-5 sets forth the procedures that must be
8 followed and reflects the standards that will be applied when a party seeks
9 permission from the court to file materials under seal.

10 2. To the extent practicable, designated items or the substance of
11 designated items shall be filed separately or in severable portions of filed papers, so
12 that non-designated items may be freely disseminated.

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14 **F. Inadvertent Disclosure**

15 1. The inadvertent or unintentional disclosure of "Confidential" or
16 "Confidential-Attorneys' Eyes Only" or any other privileged or protected item,
17 regardless of whether the item was so designated at the time of disclosure, shall not
18 be deemed a waiver in whole or in part of a party's claim of protection or privilege
19 either as to the specific information disclosed therein or on the same or related
20 subject matter, provided that the party later asserting a claim of protection or
21 privilege informs the opposing parties of its claim within a reasonable time after
22 learning of the disclosure.

23 2. The Receiving Party shall promptly destroy, sequester, or return to the
24 Disclosing Party any protected or privileged item discovered by the Disclosing Party
25 to have been inadvertently or unintentionally disclosed to the Receiving Party upon
26 being notified of the Disclosing Party's claim of protection or privilege. If the
27 Receiving Party disclosed the protected or privileged item before being notified of

1 the Disclosing Party's claim of protection or privilege, it must take reasonable steps
2 to retrieve the item for destruction, sequestering, or return to the Disclosing Party.
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4 **G. Acknowledgment of Order**

5 Each person required by this Order to sign a statement agreeing to be bound by
6 the Order must sign a statement to be delivered to and maintained by the Disclosing
7 Party which states the following:

8 I have read the PROTECTIVE ORDER issued by the United States District
9 Court for the Central District of California in the matter of *ITC Textile, Ltd. v. Wal-*
10 *Mart Stores, Inc., et al.*, Case Number CV11-01967 RSWL (PLAx) regarding
11 confidentiality of materials designated by the parties and their counsel, I understand
12 and agree to be bound by the terms of this Order.

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14 **H. Designations In Good Faith:**

15 “Confidential” and/or “Confidential/Attorneys’ Eyes Only” material shall only
16 include information which the designating party in good faith believes will, if
17 disclosed, have the effect of causing harm to its competitive position. “Confidential”
18 and/or “Confidential/Attorneys’ Eyes Only” material shall not include information
19 that (a) was, is, or becomes public knowledge not in violation of this Protective
20 Order or any other obligation of confidentiality, or (b) was or is acquired from a third
21 party having no direct or indirect obligation of confidentiality to the designating
22 party.

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24 **I. Use At Trial:**

25 Documents designated “Confidential” and/or “Confidential/ Attorneys’ Eyes
26 Only” may be used by any party without limitation at trial. However, any party that
27 wishes to have such documents treated as “Confidential” and/or “Confidential/

1 Attorneys' Eyes Only" at trial may renew their request for confidentiality before the
2 trial judge at the Final Pre-Trial Conference and/or through a motion in limine. In
3 such event, and if the documents had previously been designated as "Confidential" or
4 "Confidential/Attorneys' Eyes Only," a Receiving Party seeking to use such
5 documents at trial, or preventing the designation of such documents as
6 "Confidential" or "Confidential/Attorneys' Eyes Only," shall bear the burden of
7 showing that there is good cause to de-designate the documents for purposes of their
8 use at trial.

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10 **J. Continuing Effect of Order**

11 At the conclusion of this matter by lapse of all appeal right after entry of final
12 judgment from which no further rights of appeal exist, or by settlement of this matter,
13 each party shall promptly return to the other party all materials designated as
14 confidential and shall thereafter continue to respect all obligations hereunder as to
15 such designated materials. The Receiving Party shall not retain any copies of such
16 materials for any purpose including archival without the express written consent of
17 the Disclosing Party, except:

18 1. for archival purposes, the Receiving Party will be entitled to maintain a
19 record by list or directory for the documents that were received and returned; and

20 2. outside counsel of record may retain bona fide work product pursuant to
21 all obligations hereunder as to such designated materials.

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23 **K. Objections To Designations And/Or Additional Relief**

24 No party is prevented from seeking relief not provided by this Order, or
25 otherwise seeking relief from the United States District Court for the Central District
26 of California, as may be appropriate to protect its interests or otherwise prepare this
27 matter for trial, including objecting to a designation of confidentiality, requesting still

1 further limits on disclosure (such as in camera review in extraordinary
2 circumstances), or otherwise modifying this Order. In such event, Local Rule 37
3 governs the procedure for resolving such disputes. In making or opposing any motion
4 relating to the designation of Confidential Information, the party seeking to de-
5 designate a document under the Protective Order shall bear the burden of showing
6 lack of prejudice or harm if the information sought to be protected is disclosed to the
7 public. If a party disagrees with or challenges the grounds or basis for the
8 designation of any document or information as Confidential Material, that party
9 nevertheless shall treat and protect such material as Confidential Material in
10 accordance with this Protective Order unless and until all parties shall have agreed in
11 writing, or an order of the Court shall have been entered, that provides that such
12 challenged Confidential Material may be used or disclosed in a manner different
13 from that specified for Confidential Material in this Protective Order.

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15 **L. Use for This Litigation Only**

16 1. Items designated under this Order shall not be used by any recipient or
17 disclosed to anyone for any purpose other than in connection with the above
18 captioned action.

19 2. In the event that any party and/or recipient of Confidential Information
20 pursuant to this Order is served with legal process or otherwise requested to disclose
21 any Confidential Information (the "Disclosing Entity") by any person or entity not
22 covered by this Order, including, without limitation, other insurance carriers, state,
23 local or federal agencies, or litigants in other litigation (the "Requesting Entity"), the
24 Disclosing Entity shall give notice thereof, by telephone and facsimile, as soon as
25 practicable but in any event sufficiently prior to the requested disclosure to afford an
26 opportunity to intervene for any party who may be adversely affected by the
27 disclosure except to the extent that such notice is precluded by law.

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1 **M. Execution and Counterpart**

2 This Stipulated Protective Order may be executed in one or more counterparts,
3 each of which shall be deemed to be an original, but all of which together shall
4 constitute one and the same instrument. Facsimile signatures or any party upon the
5 signature page of this Stipulated Protective Order shall be binding upon the Parties
6 hereto and may be submitted as though such signatures were original signatures.

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8 **N. Agreement to Terms**

9 The Parties agree to abide by the terms of this Order prior to an Order being
10 entered by the Court and, in the event that such an Order is denied by the Court, the
11 Parties agree to take reasonable efforts to present revised documents such that an
12 Order for Protective Order will be entered by this Court.

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14 IT IS SO ORDERED:

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16 Dated: August 25, 2011

By: _____
Honorable Paul L. Abrams
U.S. Magistrate Judge

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EXHIBIT A

**UNDERTAKING TO BE BOUND BY THE PRETRIAL PROTECTIVE
ORDER REGARDING CONFIDENTIALITY OF DOCUMENTS**

I, _____ [print or type full name], of _____

[print or type full address], declare under
penalty of perjury that I have read in its entirety and understand the Protective Order
that was issued by the United States District Court for the Central District of
California in the case of *ITC Textile, Ltd. v. Wal-Mart Stores, Inc., et al*, Case
Number CV11-01967 RSWL (PLAx). I agree to comply with and to be bound by all
the terms of this Protective Order and I understand and acknowledge that failure to so
comply could expose me to sanctions and punishment in the nature of contempt. I
solemnly promise that I will not disclose in any manner any information or item that
is subject to this Protective Order to any person or entity except in strict compliance
with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Central District of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Dated: _____

City and State where sworn and signed: _____

Signed: _____

[Print Name]

[Signature]